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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,719	10/24/2003	Douglas R. Swarts	006386.P002	1572
40418	7590	01/11/2008		
HEIMLICH LAW 5952 DIAL WAY SAN JOSE, CA 95129			EXAMINER LEE, CLOUD K	
			ART UNIT	PAPER NUMBER
			3753	
			NOTIFICATION DATE	DELIVERY MODE
			01/11/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

alanheimlich@heimlichlaw.com  
sroberts@peloquinlaw.com

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/693,719	SWARTS, DOUGLAS R.	
	Examiner	Art Unit	
	Cloud K. Lee	3753	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

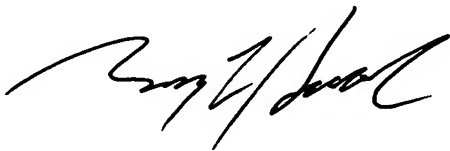
1. In view of the Appeal Brief filed on 10/24/07, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:



**GREGORY HUSON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700**

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an

international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-12 and 14-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Schoellhorn et al (US Patent No. 6,607,009).

Schoellhorn et al. disclose a fluid transfer system comprising two tanks (12 and 10), an extendible and retractable hose (42) for transferring fluid, wherein said extendible and retractable hose has two ends, a first end (the end inside structure 30) in fluid communication with both tanks, and a second end (located about cover 54 is) having an attached nozzle (the nozzle is attached to the end of the hose (42), after removing the cover (54), the fluid can remove from the hose through the nozzle), said extendible and retractable hose extendible so the nozzle is capable of being in fluid communication with a receiving receptacle (see Col 4 lines 5-10), wherein said second end is extended and retraced in response to gas pressure inside of said extendible and retractable hose (see Col 3 lines 65 to Col 4 lines 27), wherein said fluid is a liquid (see black tank 10 and gray tank 12), wherein said system is located on a vehicle (see abstract), wherein said gas is air (see air tank 46), wherein said gas pressure is above local atmospheric pressure for extending said extendible and retractable hose (see Col 3 lines 65 to Col 4 lines 27, also note, the gas pressure MUST be above local atmospheric pressure for extending the hose), wherein said gas pressure is below local atmospheric pressure for retracting the hose (see Col 3 lines 65 to Col 4 lines 27), wherein the system further comprising a venting port (18), wherein said extendible and retractable hose is a longitudinally extensible and compressible hose (figure 2 of Schoellhorn et al. shows a compressible or flexible hose), wherein said gas pressure is supplied from a pressurized gas tank (46). Regarding claim 17, Schoellhorn et al. shows the tank (46) is between

an input port and output port (see figure 1) and the input port and output port are in communication with a one way valve (44 and 50), wherein said source of receiving air is an air compressor (see Col 3 lines 28-33), wherein the system further comprising a supporting member (30), and wherein said supporting member is a tube larger in diameter than diameter of said extendible and retractable hose and the supporting member is also a storage container for the hose. Regarding claim 23, the hose (42) may extend and retract without substantial resistance through the supporting member (30) and the hose when transferring the liquid waste has the second end at an equal or lower elevation than said first end (see figure 2).

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schoellhorn et al. (US Patent No. 6,607,009) in view of Dussault (US Patent No. 6,224,345).

Schoellhorn et al. disclose the below local atmospheric pressure is generated by a vacuum created by the vent pipe (18), however, Schoellhorn et al. fail to disclose a venturi tube device to generate a vacuum.

Dussault discloses a venturi tube device to generate a vacuum (see figure 8). It would have obvious to one having ordinary skill in the art at the time the invention was made to have provided a venturi tube device in arrangement with Schoellhorn' system in order to provide a

higher efficiency vacuum generator to generate a vacuum inside the system and require less energy consumption of the system.

### *Response to Arguments*

5. Applicant's arguments filed 9/02/07 have been fully considered but they are not persuasive.

In response to applicant's argument that Schoelhorn et al's system fails to disclose a nozzle, the examiner disagrees. Schoelhorn et al's system discloses the nozzle is attached to the end of the hose (42), after removing the cover (54), the fluid can remove from the hose through the nozzle. The definition of a nozzle is a mechanical device designed to control the characteristics of a fluid flow as it exits from an enclosed chamber into some medium, thus, Schoelhorn et al's system clearly discloses a nozzle for controlling the fluid flow as it exits from an enclosed chamber and it meets the claimed limitation.

### *Conclusion*

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cloud K. Lee whose telephone number is (571)272-7206. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571)272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number:  
10/693,719  
Art Unit: 3753

Page 6

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CL